



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.27132 OF 2021

AND

W.M.P.NOS.28604, 28606 & 28607 OF 2021

1. Selvaraj Karikasseriyil Kunjan
2. Rahul Paramannil
3. Parakkatu Gopalakrishnapillai Sukumaran

... Petitioners

.Vs.

1. The Union of India,
Rep. by its Ministry of Corporate Affairs,
5th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001.
2. The Registrar of Companies,
The Tamil Nadu, Andaman & Nicobar Islands,
2nd Floor, "B" Wing,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order dated 13.12.2019 issued by the 2nd respondent published in the website "www.mca.gov.in", insofar as it relates to the disqualification of petitioners 1 to 3 as directors in M/s.Asten Enterprises Pvt. Ltd under Serial Nos.1764, 1765 and 1766 for the period from 01.11.2018 to 31.10.2023 and the consequential order of the 2nd respondent published in the website "www.mca.gov.in", dated 08.07.2019 having Ref.No.Roc/S-248/Stk1/Phase-3/2019 insofar as it relates to the deactivating the DIN of the petitioners 1 to 3 and quash the same as illegal, arbitrary and devoid of merit and consequently, direct the respondents herein to permit the



petitioners 1 to 3 to officiate as directors/additional directors in M/s.Asten Enterprises Pvt. Ltd and reactivate the DIN of the petitioners 1 to 3 for the limited purpose of striking off M/s.Asten Enterprises from the rolls of the 2nd respondent.

For Petitioners : Mr.N.R.R.Arun Natarajan

For Respondents : Mr.K.Gangadaran
Central Government
Standing Counsel

O R D E R

The prayer made in the writ petition is to issue a writ of certiorarified mandamus to call for the records of the impugned order dated 13.12.2019 issued by the 2nd respondent in so far as the petitioners herein is concerned, and to quash the same as illegal, arbitrary and devoid of merit and consequentially direct the Respondents herein to permit petitioners to get reappointed as Director/Additional Directors of M/s.Asten Enterprises Pvt. Ltd and to reactivate their DIN without any hindrance.

2. According to the petitioners, the 2nd respondent released a list of disqualified directors, who have been disqualified under Section 164(2)(a) of the Companies Act, 2013, as directors with effect from 01.11.2018 in which, the petitioners' names were also mentioned. In other words, the 2nd respondent, by including the names of the petitioners, has disqualified them as Directors under Section 164(2)(a) of the Companies Act, 2013 for non-filing of financial statements or annual returns for continuous period of three financial years by the defaulting companies on whose board, the petitioners are also the Directors, due to which, they are prohibited from being appointed or reappointed as Director in any other company for a period of 5 years until 31.10.2023. Stating that the action so taken by the second respondent is arbitrary and unreasonable, the petitioners have filed these writ petitions with the aforesaid prayer.

3. Today, when the matter was taken up for consideration, the learned counsel appearing for the parties jointly submitted that the issue involved herein is no longer res integra. Earlier, this Court by order dated 03.08.2018 in WP.No.25455 of 2017 etc. batch, in Bhagavan Das Dhananjaya Das case reported in (2018) 6 MLJ 704, allowed those writ petitions and set aside the orders dated 08.09.2017, 01.11.2017, 17.12.2018, etc. passed by the Registrar of Companies, disqualifying the petitioners



therein to hold the office of directorship of the companies under Section 164(2)(a) of the Companies Act, which came into effect from 01.04.2014. Thereafter, yet another set of disqualified directors approached this court by filing WP.No.13616 of 2018 etc. batch (Khushru Dorab Madan v. Union of India) which were dismissed by order dated 27.01.2020. The said order of the learned single judge was challenged by some of the petitioners therein before the Division Bench of this Court in W.A.No.569 of 2020, etc. batch (Meethelaveetil Kaitheri Muralidharan v. Union of India, 2020 SCC OnLine Mad 2958 : (2020) 6 CTC 113), which after elaborately dealt with the issue as to whether the RoC is entitled to deactivate the Director Identification Number (DIN), allowed those writ appeals on 09.10.2020, the relevant passage of which, are profitably, extracted below:

"41. As is evident from the above, Rules 9 and 10 deals with the application for allotment of DIN. Rule 10(6) specifies that the DIN is valid for the life time of the applicant and shall not be allotted to any other person. Rule 11 provides for the cancellation or surrender or deactivation of the DIN. It is very clear upon examining Rule 11 that neither cancellation nor deactivation is provided for upon disqualification under Section 164(2) of CA 2013. In this connection, it is also pertinent to refer to Section 167(1) of CA 2013 which provides for vacating the office of director by a director of a Defaulting Company. As a corollary, it follows that if a person is a director of five companies, which may be referred to as companies A to E, if the default is committed by company A by not filing financial statements or annual returns, the said director of company A would incur disqualification and would vacate office as director of companies B to E. However, the said person would not vacate office as director of company A. If such person does not vacate office and continues to be a director of company A, it is necessary that such person continues to retain the DIN. In this connection, it is also pertinent to point out that it is not possible to file either the financial statements or the annual returns without a DIN. Consequently, the director of Defaulting Company A, in the above example, would be required to retain the DIN so as to make good the deficiency by filing the respective documents. Thus, apart from the fact that the AQD Rules do not empower the ROC to deactivate the DIN, we find that such deactivation would also be contrary to Section 164(2) read with 167(1) of CA



2013 inasmuch as the person concerned would continue to be a director of the Defaulting Company.

42. In light of the above analysis, we concur with the views of the Delhi High Court in Mukut Pathak, the Allahabad High Court in Jai Shankar Agrahari and the Gujarat High Court in Gaurang Balvantlal Shah to the effect that the ROC is not empowered to deactivate the DIN under the relevant rules. In Yashodhara Shroff, the Karnataka High Court upheld the constitutionality of Section 164(2) and proceeded to hold that a prior or post decisional hearing is not necessary. For reasons detailed in preceding paragraphs, we disagree with the view of the Karnataka High Court that prior notice is not required under Section 164(2) of CA 2013.

43. In the result, these appeals are allowed by setting aside the impugned order dated 27.01.2020. Consequently, the publication of the list of disqualified directors by the ROC and the deactivation of the DIN of the Appellants is hereby quashed. As a corollary to our conclusion on the deactivation of DIN, the DIN of the respective directors shall be reactivated within 30 days of the date of receipt of a copy of this order. Nonetheless, we make it clear that it is open to the ROC concerned to initiate action with regard to disqualification subject to an enquiry to decide the question of attribution of default to specific directors by taking into account the observations and conclusions herein. No costs. Consequently, connected miscellaneous petitions are closed."

4. Therefore, following the aforesaid decision, these writ petitions stands allowed, in the terms as indicated in the judgement in Meethelaveetil Kaitheri Muralidharan's case. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skt



To

1. The Ministry of Corporate Affairs,
The Union of India,
5th Floor, A-Wing,
Shastri Bhawan,
New Delhi - 110 001.

2. The Registrar of Companies,
The Tamil Nadu, Andaman & Nicobar Islands,
2nd Floor, "B" Wing,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.

+1cc to Mr.N.R.R.Arun Natarajan, Advocate, S.R.No.68624

W.P.NO.27132 OF 2021 AND
W.M.P.NOS.28604, 28606
& 28607 OF 2021

PMK (CO)
PBS/09/02/2022